

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT NASHVILLE

Assigned on Briefs December 20, 2005

**STATE OF TENNESSEE v. ALFONZO WATERS, JR.**

**Direct Appeal from the Criminal Court for Davidson County  
No. 2002-C-1413     Mark J. Fishburn, Judge**

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**No. M2004-02807-CCA-R3-CD - Filed March 16, 2006**

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The defendant, Alfonzo Waters, Jr., was convicted of first-degree murder by a Davidson County jury and sentenced to life imprisonment. On appeal, he argues that the trial court erred in allowing the state to present evidence that the victim was wearing “red” or “red shoelaces.” Following our review of the record and the parties’ briefs, we affirm the judgment of the trial court.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Affirmed**

J.C. McLIN, J., delivered the opinion of the court, in which DAVID H. WELLES and JOHN EVERETT WILLIAMS, JJ., joined.

Paul J. Walwyn, Madison, Tennessee, for the appellant, Alfonzo Waters, Jr.

Paul G. Summers, Attorney General and Reporter; Benjamin A. Ball, Assistant Attorney General; Victor S. Johnson III, District Attorney General; and Dan Hamm and Deborah Housel, Assistant District Attorneys General, for the appellee, State of Tennessee.

**OPINION**

**BACKGROUND**

The defendant was convicted by jury of the first-degree murder of Charles Beasley. The proof presented at trial established that on April 15, 2002, Latonya Woods, the victim’s cousin, was emptying mop water into the alley near her home in the JC Napier housing development in Nashville when she overheard the defendant and several of his friends talking. The defendant was saying, “I ain’t playing today. . . . I ain’t playing, whatever n\*\*ger I see with some mother-f\*\*king red on, it’s on, I’m gonna kill’em. I ain’t bull-sh\*\*ting today.” Later that evening, while the victim was visiting the home of his cousin, Melvin Kimbro, along with a friend, Shawn Brown, the defendant and at least two other men approached and inquired where they were from. Mr. Kimbro answered that he was from Wharf Avenue, and the defendant responded, “Okay. Well, I feel you,” and the group left.

At this time, the defendant had a handgun tucked into the waistband of his pants, and the victim was wearing tennis shoes with red shoelaces.

Soon after, the victim and Mr. Kimbro went to Ms. Woods' house for barbecue. When the two left Ms. Woods' house with a plate of food, they again ran into the defendant and his companions. Mr. Kimbro told the defendant that they were just trying to get to his house, and they did not want any trouble. The defendant, however, approached the victim and said, "You a slob; aren't you?" Mr. Kimbro once again told the defendant that they did not want any trouble, and he and the victim continued walking toward Mr. Kimbro's house. As they were walking away, the defendant pulled out his gun and shot the victim in the back.

Police officers were dispatched to the scene and found "a male black lying on the ground, facedown, [who] had apparently been shot." The officers worked to control the crowd and set up a crime scene perimeter. Medical personnel arrived and took the victim to Vanderbilt Hospital where he later died. At trial, Mr. Brown identified the defendant as the person he saw with a gun prior to the shooting, and Mr. Kimbro identified the defendant as the person who shot the victim. Also, Mr. Brown, Mr. Kimbro, and Ms. Woods identified the shoes with red shoelaces the victim was wearing the night he was killed.

## ANALYSIS

On appeal, the defendant argues that evidence the victim was wearing red shoelaces allowed the jury to infer that the murder was gang-related and therefore constituted impermissible character evidence. The defendant notes that evidence of gang membership is inadmissible if its only purpose is to establish that the defendant acted in conformity with his bad character or to demonstrate that he had the propensity to commit a crime. *See Bunch v. State*, 605 S.W.2d 227, 230 (Tenn. 1980).

The Tennessee Rules of Evidence provide that all "relevant evidence is admissible" unless excluded by other evidentiary rules or applicable authority. Tenn. R. Evid. 402. Of course, "[e]vidence which is not relevant is not admissible." *Id.* Evidence is relevant if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." *Id.* at 401. However, even relevant evidence "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." *Id.* at 403.

Evidence of a defendant's character offered for the purpose of proving that the defendant acted in conformity with that character is not admissible. *Id.* at 404(a). Additionally, evidence of other crimes, wrongs, or bad acts is not admissible to prove the character of a person to show action in conformity with that character. *Id.* at 404(b). Such evidence may be admissible, however, for "other purposes." *Id.* Our supreme court has determined that such "other purposes" includes demonstrating motive or intent. *State v. Berry*, 141 S.W.3d 549, 582 (Tenn. 2004). A trial court's decision as to the admissibility of evidence will be reversed only upon a showing of abuse of

discretion. *See State v. Powers*, 101 S.W.3d 383, 395 (Tenn. 2003); *State v. James*, 81 S.W.3d 751, 759 (Tenn. 2002). When attempting to exclude otherwise admissible and relevant evidence, the individual seeking exclusion bears a “significant burden of persuasion.” *James*, 81 S.W.3d at 757-58.

At trial, the state questioned Vanessa Page, the defendant’s girlfriend, about whether the defendant had any kind of gang affiliation, to which defense counsel objected, and the court held a bench conference. The trial court admonished the parties not to reference gangs and gave the jury a curative instruction to disregard the question. This court presumes the jury followed the trial court’s instruction absent proof to the contrary. *See State v. Gilliland*, 22 S.W.3d 266, 273 (Tenn. 2000) (citation omitted). It is the defendant’s argument that the state bypassed the trial court’s admonishment by referring to the victim wearing red and questioning witnesses about the victim’s shoes and shoelaces and therefore insinuated the murder was gang-related without expressly stating this fact.

To begin, we note that the defendant has failed to articulate how the color of the victim’s shoelaces indicates that the murder was gang related. The defendant himself admits that there is little in the record as to the significance of “red,” other than the state’s question to one witness about whether she knew the significance of wearing red. Before that witness could answer, however, defense counsel objected, the court held a bench conference, and told the parties not to go into gang issues. Our review of the record has revealed nothing to establish that either the defendant or the victim were members of a gang. Nor have we found anything as to the significance of “red” other than the one question that was immediately objected to and never answered.

Even if we were to stretch our imagination and determine a jury could find that the state’s references to red shoelaces implied gang-relation, it is our view the evidence is still relevant and admissible for “other purposes.” There was testimony at trial from Latonya Woods that she overheard the defendant, the day of the murder, telling his friends that he was going to kill anyone he saw wearing red. At trial, three witnesses identified the victim’s shoes with red shoelaces. In light of the defendant’s statement to his friends, evidence the victim was wearing red is relevant and admissible to show the defendant’s motive for killing the victim, and to show the defendant had the premeditated intent to kill the victim. It is proper for the state to introduce evidence for the purpose of showing the defendant’s motive and intent. *See Berry*, 141 S.W.3d at 582. Even if the defendant had ulterior, subjective motivations for killing the victim, the record supports the conclusion that the defendant’s objective motivation was that the victim was wearing red.

Moreover, it is our view that the probative value of this evidence was not outweighed by the danger of unfair prejudice. This evidence was highly probative because it tended to establish both a motive and intent for the murder. The danger of unfair prejudice was slight, in that there were no explicit gang connotations. Again, we reiterate that the standard of review for the admission of relevant evidence is deferential to the trial court’s decision. Under this standard, the defendant has not shown that the trial court erred.

## **CONCLUSION**

Following our review of the record and the parties' briefs, we affirm the judgment of the trial court.

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J.C. McLIN, JUDGE